

Internal Revenue Service

Appeals Office
4330 Watt Avenue SA 7890
Sacramento, CA 95821-7012

Release Number: **201635006**

Release Date: 8/26/2016

Date: June 1, 2016

Certified Mail**Department of the Treasury**

Employer Identification Number:

Person to Contact:

Employee ID Number:

Tel:

Fax:

Tax Period Ended:

UIL: 0501 .03-00

Dear :

This is a final adverse determination regarding your exempt status under section 501(c)(3) of the Internal Revenue Code (the "Code"). It is determined that you do not qualify as exempt from Federal income tax under section 501(c)(3) of the Code, effective July 1, 2010.

Our revocation was made for the following reason:

You have not operated exclusively for one or more exempt purposes as is required to be an organization described in section 501(c)(3) of the Code. You operated in substantial part to facilitate the selling of automobiles for a fee, an activity which does not further charitable or other exempt purposes. You did not maintain sufficient records to substantiate that you actually engaged in any program of granting of funds to charitable organizations or for charitable purposes.

Contributions to your organization are not deductible under section 170 of the Code.

You are required to file Federal income tax returns on Forms 1120. File your return with the appropriate Internal Revenue Service Center per the instructions of the return. For further instructions, forms, and information please visit www.irs.gov.

If you were a private foundation as of the effective date of the adverse determination, you are considered to be taxable private foundation until you terminate your private foundation status under section 507 of the Code. In addition to your income tax return, you must also continue to file Form 990-PF by the 15th Day of the fifth month after the end of your annual accounting period.

Processing of income tax returns and assessments of any taxes due will not be delayed should a petition for declaratory judgment be filed under section 7428 of the Code.

We will make this letter and the proposed adverse determination letter available for public inspection under Code section 6110 after deleting certain identifying information. We have provided to you, in a separate mailing, Notice 437, *Notice of Intention to Disclose*. Please review the Notice 437 and the documents attached that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437.

If you decide to contest this determination, you may file an action for declaratory judgment under the provisions of section 7428 of the Code in one of the following three venues: 1) United States Tax Court, 2) the United States Court of Federal Claims, or 3) the United States District Court for the District of Columbia. A petition or complaint in one of these three courts must be filed within 90 days from the date this determination letter was mailed to you. Please contact the clerk of the appropriate court for rules for filing petitions for declaratory judgment. To secure a petition form from the United States Tax Court, write to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. See also Publication 892.

You also have the right to contact the office of the Taxpayer Advocate. Taxpayer Advocate assistance is not a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate cannot reverse a legally correct tax determination, or extend the time fixed by law that you have to file a petition in a United States Court. The Taxpayer Advocate can however, see that a tax matters that may not have been resolved through normal channels get prompt and proper handling. If you want Taxpayer Advocate assistance, please contact the Taxpayer Advocate for the IRS office that issued this letter. You may call toll-free, 1-877-777-4778, for the Taxpayer Advocate or visit www.irs.gov/advocate for more information.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely Yours,

Appeals Team Manager

Enclosure: Publication 892 and/or 556

cc:

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations

Department of the Treasury

Date:

3/19/2015

Taxpayer Identification Number:

Form:

Tax Year(s) Ended:

Person to Contact/ID Number:

Contact Numbers:

Telephone:

Fax:

Manager's name/ID number:

Manager's contact number:

Response due date:

Certified Mail – Return Receipt Requested

Dear _____:

Why you are receiving this letter

We propose to revoke your status as an organization described in section 501(c)(3) of the Internal Revenue Code (Code). Enclosed is our report of examination explaining the proposed action.

What you need to do if you agree

If you agree with our proposal, please sign the enclosed Form 6018, *Consent to Proposed Action – Section 7428*, and return it to the contact person at the address listed above (unless you have already provided us a signed Form 6018). We'll issue a final revocation letter determining that you aren't an organization described in section 501(c)(3).

After we issue the final revocation letter, we'll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.

If we don't hear from you

If you don't respond to this proposal within 30 calendar days from the date of this letter, we'll issue a final revocation letter. Failing to respond to this proposal will adversely impact your legal standing to seek a declaratory judgment because you failed to exhaust your administrative remedies.

Effect of revocation status

If you receive a final revocation letter, you'll be required to file federal income tax returns for the tax year(s) shown above as well as for subsequent tax years.

What you need to do if you disagree with the proposed revocation

If you disagree with our proposed revocation, you may request a meeting or telephone conference with the supervisor of the IRS contact identified in the heading of this letter. You also may file a protest with the IRS Appeals office by submitting a written request to the contact person at the address listed above within 30 calendar days from the date of this letter.

The Appeals office is independent of the Exempt Organizations division and resolves most disputes informally.

For your protest to be valid, it must contain certain specific information including a statement of the facts, the applicable law, and arguments in support of your position. For specific information needed for a valid protest, please refer to page one of the enclosed Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*, and page six of the enclosed Publication 3498, *The Examination Process*. Publication 3498 also includes information on your rights as a taxpayer and the IRS collection process. Please note that Fast Track Mediation referred to in Publication 3498 generally doesn't apply after we issue this letter.

You also may request that we refer this matter for technical advice as explained in Publication 892. Please contact the individual identified on the first page of this letter if you are considering requesting technical advice. If we issue a determination letter to you based on a technical advice memorandum issued by the Exempt Organizations Rulings and Agreements office, no further IRS administrative appeal will be available to you.

Contacting the Taxpayer Advocate Office is a taxpayer right

You have the right to contact the office of the Taxpayer Advocate. Their assistance isn't a substitute for established IRS procedures, such as the formal appeals process. The Taxpayer Advocate can't reverse a legally correct tax determination or extend the time you have (fixed by law) to file a petition in a United States court. They can, however, see that a tax matter that hasn't been resolved through normal channels gets prompt and proper handling. You may call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance. If you prefer, you may contact your local Taxpayer Advocate at:

Internal Revenue Service
Office of the Taxpayer Advocate

For additional information

If you have any questions, please call the contact person at the telephone number shown in the heading of this letter. If you write, please provide a telephone number and the most convenient time to call if we need to contact you.

Thank you for your cooperation.

Sincerely,

Margaret Von Lienen
Director, EO Examinations

Enclosures:
Report of Examination
Form 6018
Publication 892
Publication 3498

Form 886-A (Rev. January 1994)	EXPLANATIONS OF ITEMS		Schedule number or exhibit
Name of taxpayer	Tax Identification Number	Year/Period ended	
ORG		20XX 20XX	

ISSUE

Should the ORG's tax exempt status be revoked as an organization described under IRC 501(c)(3), effective July 1, 20XX because it did not operate exclusively for exempt purposes as described in section 501(c)(3)?

FACTS

Background Information

ORG was granted exemption as an organization described under Code §501(c)(3) defined in Code § 509(a) and 170(b)(1)(A)(vi) in February 18 of 20XX. ORG (EO) was incorporated as a nonprofit corporation in the state of State on March 8, 20XX. Its State State entity number is: XXXXX.

The purpose of the organization as stated on its Form 990 as following: "To provide middle and lower income families with emotional and financial assistance while they care for hospitalized family members. To raise revenue from the Organization's car donation program and donate proceeds from the sales of the vehicles to a charity of the donor's choice."

ORG described itself on its website as following: "ORG

ORG consisted of two completely separated divisions each with a different operational activities, websites and locations:

- 1.) **CO Charity auto clearance** located at Address, City, State Zip code (CO)
Web address: www.website.com.
- 2.) **ORG** located at Address, City, State Zip code. (ORG)
Web address: http://www.website.org.

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ORG filed Forms 990 Return of Organization Exempt From Income Tax for the last years as following.

	20XX	20XX	20XX
Revenue			
Contributions and grants	0	0	0
Program Service Revenue	-	-	-
Investment Income	-	-	0
Other revenue	-	-	-
Total revenue	0	0	0
Expenses:			
Grants paid	0	0	0
Benefit paid to or for members			
Salary and other compensations	0	0	0
Other expenses	0	0	0
Total Expenses	0	0	0

Findings in examinations:

During the examination, the assigned agent sought information concerning the activities of the org and how it was operated during the taxable years at issue. The following narrative summarizes the information that was provided by EO concerning its activities and manner of operations.

ORG and CO are headed by a completely separated management and each has its own offices, bank accounts and operation activities.

CO is a used car dealership headed by Director, Director of accounting. It has about 20 employees and a few independent contractors (Car sales persons). CO signs contracts with other used car dealers (**Donor**) for bringing in vehicles as far as City to be auctioned at CO's lots. There were about 0 used car dealers in FY 20XX, only 0 remaining in 20XX. The contracts outlined and dictate how the proceeds are to be split between CO and the donors. The auction prices are set by the Donors. Basically, the vehicles were brought in already detailed (cleaned). When the vehicles were sold, CO deducts 0% buyer's fee, \$0 smog check, \$0 document fee and \$0 donations. If the vehicle is not sold immediately, additional fees such as handling fee \$0/week, Storage fees \$0/day are added by CO. The remaining proceeds are returned to the Donors / other used car dealers.

CO used to conduct business with individuals who donated their personal vehicles. The donors would dictate in the auction contracts the desired auction prices, the portion of proceeds from the

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sales of the vehicles to be distributed to a charity organization of their choices. The portion of the proceeds would then be distributed to the designated charity organization upon the completion of the sales. However, this business has dried up in the last few years, affected by the recent law changes on tax deduction of the vehicles donated which limits the deduction of a motor vehicle to the gross proceeds from its sale. Individual donators do not have the same level of interest they used to have for donating their vehicles.

As the result, CO had turned its attention to conduct business with other used car dealers as stated above in the last a few years. There were very few donations made to charity organizations for the years under audit. The contracts between CO and other used car dealers do not contain a requirement to donate any portion of the proceeds from the sales of the vehicles to any charitable organization as it did with the individual donators. The \$0 donations stated in the sales contracts between CO and other used car dealers were essentially an auction fee paid to CO for using its lot and services. Even the director of accounting of CO, Director, stated during an appointment that he did not think the \$0 should be categorized as donations.

Total sales and the Donation /Auction fees for the years under examination are illustrated below. The amount of distributions was from a few individual donors.

	FY20XX	FY20XX
Total Sales	0	0
Donation / Auction Fees collected	0	0
Distribution to Charities	0	0
% Distribution to Total Sales	0.00%	0.0%
% of Distribution to Total Donation /Auction Fees Collected	0.0%	0.0%

The exempt program service from CO is virtually not existed in the year under examination. It is operation is no different from a regular use car dealership.

ORG Foundation Division:

As stated above, ORG is located in a separated address from CO. In Fact, it rents only a small office at the city of commerce City, State. It has no receptionist, staffs, or any assistants. CEO, CEO is the only person who runs this division. He can never be contacted directly at his office, or by his cell phone, one can only leave a message in the voice mail. It takes him a few days to return agent's calls if at all. POA and Director, director of CO has expressed the same frustration in contacting him as well. As CEO of the exempt organization, CEO does not appear to have any involvement in CO's operation. The two divisions appeared to run their operations totally independent from each other. The only one connection between the two divisions was that CO

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handles the payroll service for ORG and pays an annual salary of \$0 to CEO. CO explained that this arrangement was to save money in payroll cost since ORG has only one person, - CEO, CEO.

POA who is also the return preparer for EO that CO and ORG division each prepares its own G/L and send it to him for tax return preparation at the end of each fiscal year. CEO has always been late for sending in his G/L, and without any substantiation in the last a few years. POA has advised him many times in the past to correct such short fall and he has yet to make any changes. As a result, POA has stopped giving an independent audit opinion on its financial books for the past a few years. POA recognized the fact the organization has not had any meaningful charitable activities in the last a few years.

ORG reported gifting / distribution of \$0 and \$0 to the needy families in 20XX and 20XX respectively. However it has not been able to provide a copy of any approved applications or invoices associated with the gifts to the needy families. CEO had made a few promises to provide such records, but has never made good on his promises. The only records agent received from him was a copy of his personal cell phone bills which does not appeared to relate to any of the charitable activities. Other than the unsubstantiated distributions reported by ORG, it does not appear to have conducted any other charitable programs or services.

Both CO and ORG would have failed the public support test of 0.0% and the 0% facts-and-circumstances test required by a 501(c) (3) charitable organization in the years ending on June 30, 20XX and June 30, 20XX.

LAW:

Under Code §501(c)(3), any organization which is organized and operated exclusively for educational purposes, of which no part of its net earnings inures to the benefit of any private shareholder or individual, is exempt from tax pursuant to §501(a).

Code §170(c)(4) defines deductible gifts as those that are used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Regulations §1.501(c)(3)-1(d)(1)(ii) states that an organization is not organized or operated for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders or the organization, or persons controlled, directly or indirectly, by such private interests.

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Section 6001 of the Code provides that every person liable for any tax imposed by the Code, or for the collection thereof, shall keep adequate records as the Secretary of the Treasury or his delegate may from time to time prescribe.

Section 1.6001-1(e) of the regulations states that the books or records required by this section shall be kept at all times available for inspection by authorized internal revenue officers or employees, and shall be retained as long as the contents thereof may be material in the administration of any internal revenue law.

Section 1.6033-1(h)(2) of the regulations provides that every organization which has established its right to exemption from tax, whether or not it is required to file an annual return of information, shall submit such additional information as may be required by the district director for the purpose of enabling him to inquire further into its exempt status and to administer the provisions of subchapter F (section 501 and the following), chapter 1 of the Code and section 6033.

Rev. Rul. 59-95, 1959-1 C.B. 627, concerns an exempt organization that was requested to produce a financial statement and statement of its operations for a certain year. However, its records were so incomplete that the organization was unable to furnish such statements. The Service held that the failure or inability to file the required information return or otherwise to comply with the provisions of section 6033 of the Code and the regulations which implement it, may result in the termination of the exempt status of an organization previously held exempt, on the grounds that the organization has not established that it is observing the conditions required for the continuation of exempt status.

In accordance with the above cited provisions of the Code and regulations under sections 6001 and 6033, organizations recognized as exempt from federal income tax must meet certain reporting requirements. These requirements relate to the filing of a complete and accurate annual information (and other required federal tax forms) and the retention of records sufficient to determine whether such entity is operated for the purposes for which it was granted tax-exempt status and to determine its liability for any unrelated business income tax.

ORG POSITION:

EO has not provided a position to this proposed action and, with this notification, will be provided the opportunity to respond.

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GOVERNMENT'S POSITION AND CONCLUSIONS:

It is the government's position that EO failed to operate exclusively for exempt purposes during the years under examination. In particular, EO is not operated for a charitable purpose under section 501(c)(3).

Given the EO's failure to conduct any substantial charitable activities, failure to the operational tests and failure to properly maintain records as required by the Internal Revenue Code during all of the years under examination, the exempt status of the ORG should be revoked and file U.S. Corporation Tax return effective as of July 1, 20XX.